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Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BVU Authority
FOR
Unpermitted Discharges**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the BVU Authority, regarding its sewage collection system, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "BVUA" means BVU Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code 15.2-5100 et seq. BVU Authority is a "person" within the meaning of Va. Code § 62.1-44.3.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
7. "Facility" or "collection system" means the sewage collection system located within the City of Bristol, Virginia and Washington County, Virginia, owned and operated by BVU Authority, which collects and transports untreated sewage and other municipal wastes, for the residential and business customers of BVU Authority.
8. "I/I" means inflow and infiltration.
9. "O&M" means operations and maintenance.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent", a type of Special Order under the State Water Control Law.
11. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
12. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
13. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
14. "SSO" means sanitary sewer overflow.
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
16. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

17. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VCWRLF" means the Virginia Clean Water Revolving Loan Fund.
21. "VPDES" means Virginia Pollutant Discharge Elimination System.
22. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. BVUA owns and operates a sewage collection system in Bristol, Virginia and a portion of Washington County, Virginia, which services approximately 7,652 customers. The Authority's collection system includes 110 miles of sewer line, two lift stations and 2,770 manholes. Sewage is ultimately directed to and treated at a wastewater treatment plant located in and permitted by the State of Tennessee.
2. Susong Branch is located in the Tennessee/Big Sandy River Basin, Holston River Subbasin, Section 4, Class IV. Susong Branch is a tributary of Little Creek. Susong Branch is not assessed with respect to impairments and TMDL status, but is included within the Little Creek TMDL boundary (TMDL for bacteria only).
3. Little Creek is located in the Tennessee/Big Sandy River Basin, Holston River Subbasin, Section 4, Class IV. Little Creek is listed in DEQ's 305(b) report as impaired for recreational use due to fecal coliform, with sources listed as rural residential areas, unrestricted cattle access and wastes from pets. Little Creek is also listed as impaired for fish consumption use due to PCB in fish tissue, with the source listed as inappropriate waste disposal. A TMDL for the bacteria impairment, a fecal coliform TMDL for the Little Creek Watershed, was developed in 2001-2002 and approved by EPA on June 5, 2002. It was approved by the SWCB on June 17, 2004.
4. Beaver Creek is located in the Tennessee/Big Sandy River Basin, Holston River Subbasin, Section 4, Class IV. Beaver Creek is listed in DEQ's 305(b) report as impaired for recreational use due to fecal coliform, with sources listed as rural residential areas, unrestricted cattle access and wastes from pets. Beaver Creek is also listed as impaired for aquatic life due to sediment, with the sources listed as crop production, unrestricted cattle access, rural residential areas and urban runoff/storm sewers. A TMDL for both E. coli and sediment was completed in 2003-2004. It was approved by EPA on July 6, 2004 and by the SWCB on December 2, 2004. A revised TMDL for both E. coli and sediment was completed in 2015-2016. It was approved by the SWCB on December 12, 2016 and by EPA on March 9, 2017.

5. Between March 1, 2017 and May 31, 2017, the following eight SSOs from the Facility, that ultimately reached State waters, were reported to DEQ by BVUA:

IR No.	Date	Location	Cause	Volume (gal.)	Water Body
2017-S-2494	03/01/2017	MH @ Fairview St./Vermont Av.	Heavy Rainfall	Unknown	Beaver Creek
2017-S-2704	03/10/2017	MH @ Wagner Road	Line Blockage	100	Susong Branch
2017-S-3115	04/23-28/2017	MH @ Fairview St./Vermont Av.	Heavy Rainfall	Unknown	Beaver Creek
2017-S-3116	04/23-28/2017	705 Norfolk Avenue	Heavy Rainfall	Unknown	Beaver Creek
2017-S-3608	05/24-29/2017	MH @ Fairview St./Vermont Av.	Heavy Rainfall	Unknown	Beaver Creek
2017-S-3613	05/24-29/2017	705 Norfolk Avenue	Heavy Rainfall	Unknown	Beaver Creek
2017-S-3617	05/26/2017	530 Norfolk Avenue	Heavy Rainfall	20	Beaver Creek
2017-S-3619	05/28-31/2017	MH @ Fairview St./Vermont Av.	Heavy Rainfall	Unknown	Beaver Creek

6. On June 27, 2017, SWRO issued Warning Letter No. WL-013-017-SW to BVUA for the eight SSOs cited above.

7. Between June 1, 2017 and September 30, 2018, the following two SSOs from the Facility, that ultimately reached State waters, were reported to DEQ by BVUA:

IR No.	Date	Location	Cause	Volume (gal.)	Water Body
2018-S-1872	02/11-12/2018	MH @ Fairview St./Vermont Av.	Heavy Rainfall	Unknown	Beaver Creek
2019-S-0728	08/18-20/2018	MH @ Fairview St./Vermont Av.	Heavy Rainfall	Unknown	Beaver Creek

8. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
9. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
10. The Department has issued no permits or certificates to the BVUA.
11. Susong Branch is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
12. Little Creek is a surface water located partially within the Commonwealth and is a “state water” under State Water Control Law.
13. Beaver Creek is a surface water located partially within the Commonwealth and is a “state water” under State Water Control Law.
14. On July 20, 2017, BVUA responded to the WL in writing. BVUA had retained a consultant in November 2016 to conduct a sanitary sewer flow study of both the Little Creek and Beaver Creek Sewer Sheds. Per the July 20, 2017 letter, the BVUA Board was considering approval of a design service contract for the sewer sheds. The letter further stated that BVUA had applied and been conditionally approved for VCWRLF funding for I/I work on the collection system.

15. On August 2, 2017, DEQ staff met with representatives of BVUA to discuss the SSOs, WL and BVUA's response to the WL. Further discussions followed, at meetings held November 17, 2017 and March 12, 2018.
16. BVUA's consultant submitted a proposed schedule of activities to eliminate overflows within the collection system to DEQ on August 17, 2017. A revised schedule and implementation plan were submitted May 9, 2018. BVUA's consultant then submitted a Beaver Creek Interceptor Analysis and Report on June 18, 2018. After submittal of additional information on September 26, 2018 and meeting again on October 18, 2018, another revised schedule was received by DEQ on October 26, 2018. A final schedule was received by DEQ on November 9, 2018.
17. Based on the reports of the overflows, letters, and meetings cited above, the Board concludes that BVUA has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging untreated sewage and municipal wastes from its collection system to state waters, as described in paragraphs C(5) and C(7), above.
18. In order for BVUA to complete its return to compliance, DEQ staff and representatives of BVUA have agreed to the Schedules of Compliance, which are incorporated as Appendices A and B of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders the BVU Authority, and the BVU Authority agrees to perform the actions described in Appendices A and B of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of BVUA for good cause shown by BVUA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in WL No. WL-013-017-SW dated June 27, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, BVUA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. BVUA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. BVUA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by BVUA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. BVUA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. BVUA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BVUA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and BVUA. Nevertheless, BVUA agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after BVUA has completed all of the requirements of the Order;
- b. BVUA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to BVUA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BVUA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by BVUA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of BVUA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind BVUA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of BVUA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, BVUA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 08 day of February, 2019.


Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

BVU Authority voluntarily agrees to the issuance of this Order.

Date: 12/11/2018 By: Donald L. Bowman President & CEO
(Person) (Title)
BVU Authority

Commonwealth of Virginia

City/County of Washington

The foregoing document was signed and acknowledged before me this 11th day of

December, 2018, by Donald L. Bowman who is

President and CEO of BVU Authority on behalf of the Authority.

Donna L. Biggs
Notary Public

187154
Registration No.

My commission expires: 9/30/2019

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law and Regulation, BVUA agrees to implement the following actions contained in the “Beaver Creek Interceptor Analysis and Modeling Preliminary Engineering Report” dated April 2018 and received by DEQ on June 18, 2018, and the BVUA Revised Draft Consent Order Schedule dated November 9, 2018 and received by DEQ by electronic transmittal on November 9, 2018, as they relate to the VCWRLF project for sewer collection system I/I repair and/or replacement work, by the dates noted below:

BEAVER CREEK INTERCEPTOR

1. Submit final design plans and specifications for the selected Phase 1 rehabilitation projects within Sewer Shed Basin Area 1107 to DEQ.....May 1, 2019
2. Obtain DEQ Approval of Plans and Specifications*.....June 1, 2019
3. Advertise the selected Phase 1 rehabilitation projects within Sewer Shed Basin Area 1107
.....July 1, 2019
4. Award contract, issue Notice to Proceed and begin construction.....September 1, 2019
5. Achieve Substantial Completion.....March 1, 2021
6. Achieve Final Completion of the selected Phase 1 rehabilitation projects within Sewer Shed Basin Area 1107.....April 1, 2021
7. Submit PER for Phase I Flow Equalization (“FEQ”) Basin to DEQ.....May 1, 2019
8. Submit final design plans and specifications for the Phase 1 FEQ Basin to DEQ
.....July 1, 2019
9. Obtain DEQ Approval of Plans and Specifications*.....August 1, 2019
10. Advertise Phase 1 FEQ Basin.....September 15, 2019
11. Award contract, issue Notice to Proceed and begin construction.....February 1, 2020
12. Achieve Substantial Completion of Phase 1 FEQ Basin.....March 1, 2021
13. Achieve Final Completion of Phase 1 FEQ Basin.....April 1, 2021
14. Submit final design plans and specifications for Sewer Shed Basin Area 782 and selected Phase 2 rehabilitation projects within Sewer Shed Basin Area 1107 to DEQ.....May 1, 2020
15. Obtain DEQ Approval of Plans and Specifications*.....June 1, 2020

16. Advertise the Sewer Shed Basin Area 782 and selected Phase 2 rehabilitation projects within Sewer Shed Basin Area 1107July 1, 2020
17. Award contract, issue Notice to Proceed and begin construction.....March 1, 2021
18. Achieve Substantial Completion.....February 1, 2022
19. Achieve Final Completion of the Sewer Shed Basin Area 782 and selected Phase 2 rehabilitation projects within Sewer Shed Basin Area 1107.....March 1, 2022
20. Submit final design plans and specifications for the selected rehabilitation projects within Sewer Shed Basin Area 1301 to DEQ.....May 1, 2022
21. Obtain DEQ Approval of Plans and Specifications*.....June 1, 2022
22. Advertise the selected rehabilitation projects within Sewer Shed Basin Area 1301August 1, 2022
23. Award contract, issue Notice to Proceed and begin construction.....December 1, 2022
24. Achieve Substantial Completion.....May 1, 2024
25. Achieve Final Completion of the selected rehabilitation projects within Sewer Shed Basin Area 1301.....June 1, 2024
26. Submit final design plans and specifications for the selected rehabilitation projects within Sewer Shed Basin Area 1568 to DEQ.....May 1, 2023
27. Obtain DEQ Approval of Plans and Specifications*.....June 1, 2023
28. Advertise the selected rehabilitation projects within Sewer Shed Basin Area 1568August 1, 2023
29. Award contract, issue Notice to Proceed and begin construction.....November 1, 2023
30. Achieve Substantial Completion.....September 1, 2024
31. Achieve Final Completion of the selected rehabilitation projects within Sewer Shed Basin Area 1568.....October 1, 2024
32. Submit final design plans and specifications for selected rehabilitation/replacement Beaver Creek Interceptor projects to DEQ.....May 1, 2024
33. Obtain DEQ Approval of Plans and Specifications*.....June 1, 2024
34. Advertise the selected rehabilitation/replacement Beaver Creek Interceptor projectsAugust 1, 2024

35. Award contract, issue Notice to Proceed and begin construction.....November 1, 2024
36. Achieve Substantial Completion.....July 1, 2026
37. Achieve Final Completion of the selected rehabilitation work on the Beaver Creek
Interceptor.....August 1, 2026
38. Notify DEQ in writing within ten days of completion of any item noted in Items 1 through 37
above.
39. Submit quarterly progress reports to the SWRO. The reports shall be received no later than
the 10th day of the month following the quarter. For example, the first report, for the
reporting period April 1, 2019 through June 30, 2019, shall be due on July 10, 2019.
40. Unless otherwise specified in this Order, the BVU Authority shall submit all requirements of
Appendix A of this Order to:

Ruby Scott
Compliance Auditor
VA DEQ – Southwest Regional Office
355-A Deadmore Street
Abingdon, Virginia 24210
Phone: (276) 676-4882
Fax: (276) 676-4899
ruby.scott@deq.virginia.gov

- * Upon approval by DEQ, said documents/schedules shall become an enforceable part
of this Order, as stated in Item 12 of Section E, Administrative Provisions, of the Order.

APPENDIX B SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law and Regulation, BVUA agrees to implement the following actions contained in the BVUA Revised Draft Consent Order Schedule dated November 9, 2018 and received by DEQ by electronic transmittal on November 9, 2018, as they relate to the VCWRLF project for sewer collection system I/I repair and/or replacement work, by the dates noted below:

LITTLE CREEK INTERCEPTOR

1. Submit final design plans and specifications.....May 1, 2019
2. Obtain DEQ Approval of Plans and Specifications*.....June 1, 2019
3. Advertise Little Creek Interceptor Project.....July 1, 2019
4. Award contract, issue Notice to Proceed and begin construction.....October 1, 2019
5. Achieve Substantial Completion of project.....March 1, 2021
6. Achieve Final Completion of project.....April 1, 2021
7. Notify DEQ in writing within ten days of completion of any item noted in Items 1 through 6 above.
8. Submit quarterly progress reports to the SWRO; the first report, for the reporting period April 1, 2019 through June 30, 2019, shall be due on July 10, 2019; subsequent quarterly reports shall be submitted in the same manner until the project is completed.
9. Unless otherwise specified in this Order, the BVU Authority shall submit all requirements of Appendix B of this Order to:

Ruby Scott
Compliance Auditor
VA DEQ – Southwest Regional Office
355-A Deadmore Street
Abingdon, Virginia 24210
Phone: (276) 676-4882
Fax: (276) 6764899
ruby.scott@deq.virginia.gov

- * Upon approval by DEQ, said documents/schedules shall become an enforceable part of this Order, as stated in Item 12 of Section E, Administrative Provisions, of the Order.